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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

GTE's COMMENTS

Dated: May 8, 1998

GTE Service Corporation and its affiliated
telecommunications carriers

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GTE Service Corporation and its affiliated telecommunications carriers,¹ pursuant to the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. section 1001 *et seq.*,² and in response to the Commission's Notice DA 98-762 (released April 20, 1998) (the "Notice"), hereby join numerous parties in requesting Commission action under section 1006(c) extending the October 1998 deadline for at least two years after the parameters of CALEA compliance have been authoritatively identified.³

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Wireless Incorporated, and GTE Communications Corporation.

² All references to statutory sections or subsections are to 47 U.S.C. unless otherwise specified.

³ See Petition for Extension of Time filed March 31, 1998 by AT&T Wireless Services Inc. ("AWS"), Lucent Technologies Inc. and Ericsson, Inc. (the "AWS *Petition*"), seeking an extension until at least October 24, 2000; petition for rulemaking filed April 2, 1998 by the Telecommunications Industry Association (the "TIA *Petition*"); and United States Telephone Association Petition for Extension of Compliance Date filed April 24, 1998 (the "USTA *Petition*"). Also involved is the July 16, 1997 petition of the Cellular Telecommunications Industry Association (the "CTIA

(Continued)

INTRODUCTION AND SUMMARY

The enactment of CALEA in 1994 required that the telecommunications industry implement CALEA over a period of four years extending from the date of enactment. During that time, two different but interrelated obligations were imposed on telecommunications carriers subject to CALEA. Namely, carriers are required to meet both an assistance capability and a capacity requirement imposed by subsections 1002, 1003, and 1006.

Congress decided to implement these obligations in two phases: First, the Attorney General was responsible for establishing the capacity requirements within one year of the enactment, or by October 25, 1995. As noted *infra*, issuance of the Final Notice of Capacity would be delayed by more than thirty months. Second, the telecommunications industry was made responsible for developing and implementing the assistance capability standards necessary to support CALEA within the three years following the release of the capacity requirements, or by October 25, 1998.

Having already received many submissions maintaining that the October 25, 1998 date cannot be met, the Commission is now seeking comment in this proceeding on the advisability of extending this deadline as contemplated by section 1006(c). Submissions reflected in the Notice testify to the great range of difficulties parties have encountered in seeking to discharge their CALEA obligations. A number of difficulties

Petition") addressing the impasse between industry and law enforcement over the capabilities comprising CALEA compliance. In addition, many parties filing comments or reply comments in this CC Docket No. 97-213 ("D.97-213"), including GTE, have urged the Commission to take action extending the date for CALEA compliance from October 1998.

arose because of the extended delay already mentioned: the Final Notice of Capacity was not issued until March 10, 1998; and even then a number of essential points require clarification.

Even more critically, the industry's interim standard for assistance capability is still not approved. In fact, it is the subject of the March 27, 1998 Joint Petition For Expedited Rulemaking submitted by the FBI and the Attorney General (the "*FBI/DOJ Petition*") asking for initiation of an expedited rulemaking under subsection 1006(b). However accelerated the action of the FCC may be, no one can expect that compliance with CALEA standards when finally approved will be overnight. A strong consensus of parties is that implementation of the approved standard will require two years, and even the *FBI/DOJ Petition* (at paragraph 114) acknowledges that eighteen months will be required for implementation.

Given this concession, the issue is not whether an extension is necessary; it is how long the extension should be. GTE joins many parties in urging the FCC to grant an industry-wide extension of twenty-four months from the date when the standard is approved.

I. THE COMMISSION SHOULD EXTEND THE OCTOBER 25, 1998 DEADLINE FOR CALEA COMPLIANCE BY MAKING IT, FOR ALL PARTIES, TWO YEARS FROM THE DATE WHEN THE FUNCTIONS MANDATED BY CALEA HAVE BEEN AUTHORITATIVELY ESTABLISHED.

An extension of the October 25 deadline is not only warranted by the record in this proceeding; it is mandated by virtue of the time that has passed without final determination of the functions that would comprise CALEA compliance under section 1006 – which is further complicated by continuing uncertainties concerning the capacity requirement under section 1003. In light of the potentially massive, complex and

immensely costly work that would have to be done in an appropriate sequence to achieve CALEA compliance by all the wireline and wireless firms in the country, this inability to identify just what the carriers are expected to do leads inevitably to the need for a 24-month extension of the October date. Otherwise, the nation's carriers (and equipment manufacturers) must grapple with indefinite and unstable obligations under CALEA that could involve incurring potentially vast costs without confidence that they will be compensated. Given several years of disputes between the industry and the FBI as to the limits on CALEA-required functions, this action would subject the carriers to several grave and unfair overlapping risks:

First, what GTE calls the *Too-Much Risk*, namely the risk that, when a definitive identification of the CALEA-required functions is finally made, it would turn out that the carriers had done too much (*i.e.*, more than what is mandated by CALEA) and thus would not be entitled to recover the entire amount of CALEA-related cost incurred.

Second, what GTE calls the *Too-Little Risk*, namely the risk that, when a definitive identification of the CALEA-required functions is finally made, it would turn out that the carrier would have done too little (*i.e.*, less than what is mandated by CALEA) and thus be subject to penalties for failure to comply with CALEA – perhaps as much as \$10,000 per day. See 18 U.S.C. section 2522.

Third, what GTE calls the *Do-It-Again Risk*, namely the risk that, when a definitive identification of the CALEA-required functions is finally made, it would turn out that the carrier would have to do again some or all of the work done to comply with CALEA if the result is deemed non-compliant by virtue of later-identified functions.

These three categories of risk overlap, so that failure in relation to the *Too-Little Risk*, and possibly in relation to the *Too-Much Risk* could activate a *Do-It-Again* requirement.

There is nothing in CALEA that says Congress intended to place carriers at risk in these ways. To guard against this possibility, Congress created a role for the FCC, including specifically the power under subsection 1006(c) to extend the October 1998 date for CALEA compliance. In imposing statutory obligations on carriers under CALEA, there was recognition of a constitutional right to recover full compensation for a governmental taking, and the statute expressly provides for recovery. But congressional expectations and the plan of Congress embodied in CALEA must have assumed the CALEA functional and capacity requirements (established under sections 1002, 1003, and 1006) would either be sufficiently intelligible and stable to require no agency interpretation or that any disputes or questions would be settled in a timely way.

Instead, final identification of the functional standard and the FBI's notification of the capacity requirement have both lagged many, many months behind what anyone would have expected. This extreme lag continues to deny carriers the opportunity to simply comply with CALEA without compromising themselves under all three risks identified *supra*. Surely this is not the result intended by Congress.

In stressing the urgency of this matter, GTE joins the *USTA Petition*, the *CTIA Petition*, the *AWS Petition* and the *TIA Petition*. GTE joins the *AWS Petition* and the *TIA Petition* in urging the FCC to take prompt action extending the October 1998 risk to a date not earlier than two years following authoritative identification of the parameters of CALEA compliance, *i.e.*, definitive establishment of the CALEA-required functions under section 1006. This is suggested by the *AWS Petition*, which points out (at 5): "As

the Commission knows, and as the FBI itself has recognized, the ordinary development cycle for hardware and software is 24 months after promulgation of a standard."⁴ The AWS Petition (at 9) also says:

There is no dispute, even with the FBI, that it takes up to 2 years to develop technology to an industry standard. Carriers then need time to field test and deploy the technology. Thus, 2 years may not be enough time. . . . And further extensions may be necessary.

In light of the overwhelming consensus of the parties – if not unanimity – on this point, the Commission should promptly move to extend the October 25, 1998 deadline for all parties to a date not earlier than 24 months following the date when the CALEA-required functions are definitively determined.

II. THE COMMISSION SHOULD REEXAMINE THE 1995 CUT-OFF AND MAKE APPROPRIATE RECOMMENDATIONS TO CONGRESS.

The unexpected factual pattern related *supra* – primarily the delays amounting to several years in specifying the functions and capacity that are CALEA-required – mandate an examination by the FCC of how the current situation relates to that contemplated by CALEA and its objectives. The 1995 cut-off now no longer makes sense in terms of implementing CALEA since the point at which carriers will know in specific terms what their obligations are has not yet been reached. Indeed, that point could be months or years in the future.

As part of its statutory task, the Commission should look at how CALEA can be expected to operate in the real world. To the extent portions of the statute appear unworkable, the FCC may and should address recommendations to Congress as to

⁴ Footnote omitted.

how to put it right. GTE urges the Commission to undertake this examination and to make appropriate recommendations to Congress. This should include replacement of the January 1, 1995 date with one that has a more realistic relationship to the time when carriers became able to undertake a massive and costly program with reasonable assurance that the objectives and other applicable parameters were firmly established.

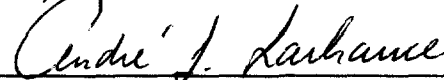
Dated: May 8, 1998

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Comments" have been mailed by first class United States mail, postage prepaid, on May 8, 1998 to all parties of record.

A handwritten signature in black ink, appearing to read "Ann D. Berkowitz", written over a horizontal line.

Ann D. Berkowitz